

§ 1491.30

NRCS may work through the local conservation district in the development of the conservation plan. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement shall grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities.

(g) Prior to easement closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation shall be provided to NRCS by the cooperating entity.

(i) Impervious surfaces shall not exceed two percent of the FRPP easement area, excluding NRCS-approved conservation practices. The NRCS State Conservationist may waive the two percent impervious surface limitation on a parcel by parcel basis, provided that no more than ten percent of the easement area is covered by impervious surfaces. Before waiving the two percent limitation, the State Conservationist must consider, at a minimum: population density; the ratio of open prime other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; and parcel size. All FRPP easements must include language limiting the amount of impervious surfaces within the easement area.

(j) The conservation easement deed must include an indemnification clause requiring the landowner (grantor) to indemnify and hold harmless the United States from any liability arising

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from or related to the property enrolled in FRPP.

(k) The conservation easement deed must include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and this part.

[74 FR 2818, Jan. 16, 2009, as amended at 74 FR 31581, July 2, 2009]

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the eligible entity shall notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the entity fails to enforce any of the terms of the conservation easement, as determined in the sole discretion of the Chief, the Chief and his or her successors or assigns may exercise the United States' rights to enforce the terms of the conservation easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations, as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by the NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States shall be entitled to recover any and all administrative and legal costs from the participating entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.